

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**IN THE MATTER OF** : **Orphan's Court Division**  
**LUCILLE ECKER,** :  
Deceased : **No. 41-10-0493**

**OPINION AND ORDER**

Lucille Ecker died on July 24<sup>th</sup>, 2010. The Last Will and Testament of Ms. Ecker was duly probated. As well, various Codicils were filed or probated. Subsequently, the different affected parties filed a Petition to Remove Executor and Trustee, and Objections to the Trust Accounting. Conferences were held, pre-hearing documents were submitted, and issues were identified to be addressed at the hearing. Subsequently, the issues were further delineated. The parties engaged in pre-hearing discovery. While preparing for his deposition, Peter Facey, Attorney for Decedent's estate, discovered on Monday, June 4<sup>th</sup>, 2012, an alleged draft of a Second Codicil. Attorney Facey immediately disclosed the Second Codicil to the Court and other parties involved in the estate.

Conferences were scheduled to determine the manner in which the Codicil would be addressed. The Conferences were held on June 14<sup>th</sup>, 2012 and June 26<sup>th</sup>, 2012.

For varied reasons, none of the parties wish to submit the Codicil for probate. An oral petition was made to the Court for an Order directing the register to certify the entire record relating to the Codicil to the Court.

The Court may order the register to submit the entire record pursuant to 20 Pa. C.S.A. § 907, which reads as follows:

Whenever a caveat shall be filed or a dispute shall arise before the register concerning the probate of a will, the grant of letters or the performance of any other function by the register, he may certify, or the court upon petition of any party in interest may direct the register at any stage of the proceeding to certify, the entire record to the court, which shall proceed to a determination of the

issue in dispute.

Id.

Certification of a case from the register of wills to the Orphan's Court is to be exercised with caution. In Re Milgrom's Estate, 20 Pa. D. & C. 2d 177, 180 (1963). The certification shall be ordered when the register is confronted with an unusually difficult or complicated question. Id. "There must be present some evidence of an unusual, complicated, or extraordinary situation; otherwise, the Orphan's Court will be turned into a Court of Probate and it will be usurping duties ordinarily and regularly entrusted by statute to the register." Id. at 81.

This case now before the Court is sufficiently difficult, unusual, and complicated to warrant directing a certification of the record. Before the Court is the Decedent's will. Additionally, there is an alleged draft of a Second Codicil, which if authenticated, would alter the Decedent's existing will and significantly change the parties' positions with respect to the pending Petitions and Objections. As a result, this case involves many intricate and difficult questions of evidence and law that need to be considered. Without the entire record, the Decedent's estate cannot be administered properly.

### **ORDER**

AND NOW, this \_\_\_\_ day of July, 2012, the Court directs Attorney Facey to present the Second Codicil document to the register. The Court orders the register to probate the document and notify the parties of said probate. The parties may file objections to the probate as they deem appropriate and a hearing shall be scheduled.

By the Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Chris Williams, Esquire  
Doug Engelman, Esquire  
Peter Facey, Esquire  
Register & Recorder  
Gary Weber (Lycoming Reporter)  
Work File